



Consumer Law Reform Additional Paper – February 2011

Collateral credit agreements and rejection of goods under the Consumer Guarantees Act

Introduction

- 1 In June 2010, the Ministry of Consumer Affairs released the discussion paper “*Consumer Law Reform*”. The discussion paper raised the option of adding provisions to the Consumer Guarantees Act to enable consumers who have purchased goods on credit and subsequently rejected the goods because of a serious fault to obtain an order from the Disputes Tribunal to have the credit arrangement vested with the trader. This remedy would be an option if a full refund for the goods has not been provided by the trader. This paper considers the comments made in submissions on this issue and provides further analysis.
- 2 The discussion paper proposed including provisions in the Consumer Guarantees Act equivalent to those in section 89(2) of the Motor Vehicle Sales Act 2003 (MVSA). Section 89(2) enables a consumer to seek an order from the Motor Vehicle Disputes Tribunal (MVDT) for a credit contract to be vested with the vehicle trader where:
 - the credit contract is associated with the contract for the sale of the vehicle;
 - the credit to purchase the vehicle was arranged by the trader (or the buyer); and
 - the consumer has rejected the vehicle under the Consumer Guarantees Act; or
 - the consumer has suffered (or is likely to suffer) loss or damage due to conduct of the trader that contravenes the Fair Trading Act.¹

¹ Section 89 (2) and (3) Motor Vehicle Sales Act 2003

(2) A Disputes Tribunal may order that the rights and obligations of the buyer of a motor vehicle under a collateral credit agreement vest in a motor vehicle trader if—

- (a) the collateral credit agreement is associated with the contract for the sale of that motor vehicle; and
- (b) the motor vehicle trader is a party to that contract for sale; and
- (c) either one of the following circumstances applies:
 - (i) the buyer exercises the right conferred by the Consumer Guarantees Act 1993 to reject that motor vehicle and, on a claim by the buyer under section 47(1) of that Act, the Disputes Tribunal orders the motor vehicle trader to refund any money paid, or other consideration provided, for that motor vehicle; or

- 3 The effect of a vesting order under the MVSA is to relieve the consumer of the obligations under the collateral credit agreement, and for those obligations (and rights) to be transferred to the motor vehicle trader. This is logical when the motor vehicle has been rejected by the consumer and re-vested in the trader under the Consumer Guarantees Act and the consumer has not received a refund or has incurred additional costs under the credit agreement. The provisions strengthen the redress rights for consumers under the Consumer Guarantees Act.
- 4 The provision also provides an additional remedy when the MVDT declares a sale agreement to be void because of a breach of the Fair Trading Act.
- 5 The relevant principle from a consumer law and policy point of view is that consumers should be able to be confident that effective redress will be available to them if the guarantees under the Consumer Guarantees Act or the provisions of the Fair Trading Act are breached. Consumers do not have effective redress if they remain potentially liable under a collateral credit agreement for the value of goods they have rejected under the Consumer Guarantees Act or where the MVDT has accepted that a dealer has acted in a misleading or deceptive manner.
- 6 Apart from the specific case of motor vehicles, the current position in respect of all other goods is that a consumer who has rejected the goods because of a breach of a Consumer Guarantees Act guarantee has no basis to apply to be discharged from liability under a collateral credit agreement arranged by the supplier, even though the ownership in the rejected goods will have re-vested in the supplier under section 22(3) of the Consumer Guarantees Act and the consumer may not have received a refund.
- 7 The range of remedies available if a sale agreement is voided under the Fair Trading Act is wider than those available on the rejection of goods under the Consumer Guarantees Act. A consumer could apply to a court (but not the Disputes Tribunal)² to void or vary the collateral credit arrangement if the supplier contravened the Fair Trading Act, but that right does not apply on the breach of a guarantee under the Consumer Guarantees Act. The court has the power to void a sale agreement or a collateral arrangement related to the sale agreement, but there is no express power under the Fair Trading Act for the court to discharge a

(ii) *the Disputes Tribunal finds that the buyer has suffered, or is likely to suffer, loss or damage by the conduct of the motor vehicle trader that constitutes, or would constitute, any of the conduct referred to in section 43(1) of the Fair Trading Act 1986 and the Disputes Tribunal makes an order under section 43(2) of that Act declaring the whole or any part of the contract for sale to be void.*

(3) *For the purposes of subsection (2), **collateral credit agreement**, in relation to a contract for the sale of a motor vehicle, means a contract or agreement arranged or procured by the motor vehicle trader or the buyer for the provision of credit by a person other than by the motor vehicle trader to enable the buyer to pay the price reserved by the contract for sale in respect of the motor vehicle.*

² The remedies of voiding or varying contracts and collateral arrangements under section 43(2)(a) and (b) of the Fair Trading Act are only available in proceedings before courts and not Disputes Tribunals (section 39 Fair Trading Act). Extending Disputes Tribunals' powers to include section 43(2)(a) and (b) remedies is one of the recommendations considered in the Consumer Law Reform project.

consumer from liability under a collateral credit agreement by vesting the collateral credit agreement in the trader.

- 8 As the law currently stands, if there is a collateral credit agreement and the goods are rejected or a sale agreement is avoided, the consumer or other purchaser remains liable under the credit agreement, and is dependent on the supplier to provide a refund or pay damages to repay the debt to the creditor. The consumer or other purchaser is also exposed to interest costs and fees under the collateral credit agreement. The discussion paper noted two examples of traders becoming insolvent and consumers being placed in a disadvantaged position.

Overview of Comments in Submissions

- 9 This issue was considered in 22 submissions received on the discussion paper. Of these, 19 submissions supported the proposal to add protection regarding collateral credit agreements for all goods under the Consumer Guarantees Act.³ These submitters generally considered that the proposal was sensible and fair, and that the provisions were necessary to relieve consumers from ongoing credit obligations for goods that are seriously flawed or where the consumer purchased the goods because of a misrepresentation or other poor trader conduct.
- 10 Opposition to the proposal came from the Financial Services Federation (FSF) which noted the provisions in section 89(2) of the MVSA are not often encountered by their members involved in providing credit for motor vehicles. Further, the FSF contended that because the provisions are not widely used for motor vehicle credit sales, which are typically of high value, extending similar provisions to lower value items is unnecessary.
- 11 One creditor raised a particular concern that the vesting provisions have the potential to increase lender risk, especially where credit contracts are vested with traders that are insolvent or in liquidation. They questioned whether it is a fair outcome to put the creditor in a position where they may not be able to recover the debt because of a trader's failure to provide goods of acceptable quality or to conduct their business in accordance with the Fair Trading Act.
- 12 This creditor also questioned whether it is appropriate to place consumers purchasing goods on credit in a more advantageous position than consumers purchasing goods with cash or cash equivalent from a trader (i.e. credit card or separately arranged finance).

Responding to these points

- 13 Evidence from the MVDT decisions database indicates that the section 89(2) vesting provisions are being used to relieve consumers from their obligations

³ This support came from consumer organisations (45%), industry (non-lender) (23%) and legal/other (18%).

under collateral credit agreements for motor vehicles⁴. The values involved in some of these decisions are also well within the monetary limits of the Disputes Tribunal jurisdiction (\$15,000).⁵ As the value of some consumer goods may exceed the monetary limit of the Disputes Tribunal jurisdiction, it may be prudent to extend the ability to vest collateral credit agreements in suppliers to the courts as well as the Disputes Tribunal.

- 14 The provisions in the MVSA mainly apply to collateral credit agreements where the trader arranged or procured the credit. In other words, the creditor is in a commercial relationship with the trader. Section 89(3) of the MVSA also refers to a credit contract arranged by the *buyer* to pay for the motor vehicle, but the collateral credit agreement is still required to be “associated with the contract for the sale” to be eligible to be vested in the trader under section 89(2). A credit agreement that is procured or arranged by the buyer is not likely to be sufficiently “associated” with the contract for sale to be eligible to be vested in the trader if the goods are rejected, so the reference to the buyer in section 89(3) of the MVSA may be unhelpful for the purposes of the Consumer Guarantees Act. The intention for the purposes of the Consumer Guarantees Act is that any additional risk exposure for creditors will only arise in transactions where creditors and traders have a commercial relationship.
- 15 The change may not be as significant as some creditors seem to expect, because the Consumer Guarantees Act already provides for creditors under collateral credit agreements to be treated as suppliers where the credit is arranged by the trader supplying the goods. The Act’s extended definition of supplier covers creditors where security is taken over the goods supplied, the credit is arranged through the trader and the credit is used to purchase the goods. The definition also covers transactions where the goods are assigned to the creditor so the creditor can supply the goods itself (i.e. a hire purchase-type transaction).
- 16 Consumers using collateral credit agreements to purchase goods therefore already have more protection under the Consumer Guarantees Act than consumers using other payment methods. The extended definition of “supplier” in the Consumer Guarantees Act recognises that the relationship between the trader and creditor facilitates business for both parties.⁶ The inclusion of creditors within the definition of supplier enables a consumer who rejects goods because of a breach of a Consumer Guarantees Act guarantee to demand a refund under section 23(1)(a) directly from the creditor, even if the supplier is insolvent or in liquidation.⁷

⁴ Reference No. MVD 216/09 (Auckland) [2010] NZMVD 11 (12 February 2010) / MVD 177/09 (AK) [2009] NZMVD 144 (20 November 2009) / MVD 92/2008 (AK) [2008] NZMVD 88 (22 May 2008) / MVD 236/07 (AK) [2007] NZMVD 212 (19 November 2007).

⁵ The MVDT has a monetary jurisdiction limit of \$100,000.

⁶ To mitigate risks, creditors are able to assess the risks associated with providing credit through particular retailers – i.e. assess the retailers’ liquidity, reputation and quality of their products – and make decisions accordingly as part of good business practice. If the risks are significant then they can build this in to the cost of credit or refuse to be associated with high risk retailers.

⁷ Gault on Commercial Law - CG2.15.02 Assignees and financiers

“The definition of “supplier” includes persons who provide finance in conjunction with the supply of goods or services to consumers, and places on them a joint and several liability (along with the primary supplier) to the consumer for the Consumer Guarantees Act guarantees: s 46; s 11

- 17 Whether consumers, traders or creditors are generally aware of this right is uncertain. In practice, consumers are probably unlikely to claim a refund through the creditor under collateral credit agreements when they reject goods under the Consumer Guarantees Act. There is anecdotal evidence that creditors do work with consumers to obtain replacements for goods that are rejected when the trader is in liquidation, which suggests that at least some creditors do recognise their obligations under the Act.
- 18 The key point for present purposes is that giving the Disputes Tribunal or court the additional power to relieve consumers from liability under collateral credit agreements by vesting those agreements in the supplier and discharging the consumers' personal liability is consistent with the treatment of collateral credit agreements under the Consumer Guarantees Act already. Creditors under collateral credit agreements are already potentially responsible when the goods being sold (and funded) are rejected under the Consumer Guarantees Act.
- 19 The creditor that made a submission opposing the proposal made the additional suggestion that, if the proposal nevertheless proceeds, then the vesting provisions should be limited to instances where the creditor has security over the goods.⁸ This approach would align with the part of the supplier definition in the Consumer Guarantees Act which refers to secured creditors under collateral credit agreements, but it does not align with section 89(2) of the MVSA, which does not refer to creditors being required to have taken security over the purchased goods.
- 20 Typically consumer finance creditors take security over the goods they finance (as they would with motor vehicles). Goods which are returned to the supplier after they are rejected under the Consumer Guarantees Act will re-vest in the supplier (section 22(3)) subject to any security over the goods. Goods under a contract that is voided by a court under the Fair Trading Act will also effectively re-vest in the supplier. The risk for consumers is that they will remain personally liable for the debt (including interest and any costs), independently of any security. The existence of a security does not seem to be a relevant consideration when the primary point is that the effectiveness of the redress for consumers under the Consumer Guarantees Act is undermined if they remain personally liable for the price of goods that have been rejected.
- 21 The same point applies to the effectiveness of redress available to purchasers under the Fair Trading Act if a court exercises its power to void their sale agreement.

Contractual Remedies Act 1979. Those financiers will also be primary suppliers of financial services and therefore subject to liability under the service guarantees.”

The definition also includes as suppliers of goods financiers who provide finance directly to consumers who acquire goods, for example personal loan finance, providing the finance is arranged by the primary supplier. It may also apply to financiers who provide bulk funding to persons who supply goods to consumers, as there seems to be no requirement that the funding is to be supplied by the financier to the consumer.

⁸ This would provide creditors with continuing security over the goods when a credit contract is vested with a retailer; however the value of the goods may be negligible where they have been rejected for a substantial failure.

22 From a drafting point of view, it would be easier to deal with the existing definition of “supplier” under the Consumer Guarantees Act, which only applies to collateral credit agreements that are secured. However there is no reason in principle why consumers with unsecured loans should not have the same protections available to them as consumers with secured loans.

Additions to the Proposal

23 Submitters suggested several additions to the proposal, including,

- the ability to vest the collateral credit agreements with manufacturers;
- clarifying the ability to void a credit contract where the goods are not supplied or able to be supplied;
- that rejection should automatically vest the credit contract with the retailer/supplier; and
- that statutory warranties should also apply to collateral credit agreements.

Vesting Credit Contract with Manufacturer in CGA Rejection Scenario

24 One submitter suggested that the power to vest collateral credit agreements in suppliers should be added to the Fair Trading Act as well as the Consumer Guarantees Act, so the same remedy is available if a sale agreement is voided by a court under the Fair Trading Act because of misleading and deceptive practices by the trader. The submitter also suggested that it may be appropriate to enable collateral credit agreements to be vested with manufacturers, rather than suppliers, where the manufacturer is responsible for conduct that breaches the Fair Trading Act.

25 The MVSA provides the remedy of vesting collateral credit agreements in the supplier in the case of vehicles that are rejected on a breach of a guarantee under the Consumer Guarantees Act, and in the case of contracts that are voided by a court following a contravention of the Fair Trading Act. It is logical that the same remedy in respect of contracts for the sale of goods apart from motor vehicles should be available under both Acts.

26 One significant difference is that the Consumer Guarantees Act only applies to agreements entered into by consumers, while the Fair Trading Act applies to contracts by traders and any other parties, including consumers and other traders. Purchasers that enter into collateral credit agreements which are themselves traders or suppliers would therefore have access to any new remedy for vesting collateral credit agreements under the Fair Trading Act.

27 The Fair Trading Act already includes significant sanctions for breaches, so the additional remedy may not be as necessary under the Fair Trading Act as it is under the Consumer Guarantees Act. Breaches under the Fair Trading Act can be investigated by the Commerce Commission and prosecutions taken. Consumers are also able to take action to the Disputes Tribunal or court. Under section 43(2)(a) of the Fair Trading Act a court has the ability to void part or all of a sale and purchase contract and any collateral arrangement relating to the

purchase or award costs for loss or damage. Collateral arrangements under section 43(2)(a) include collateral credit agreements. The court also has the power to amend the contract or arrangement, although the court does not have the power to vest a collateral credit agreement in a supplier under the Fair Trading Act. Under the law as it currently stands, purchasers who succeed in having a contract for sale voided by a court because of a breach of the Fair Trading Act would have to rely on the court's discretion to take the consumer's exposure under a collateral credit agreement into account when it decides on the remedies that would be most effective and appropriate.

- 28 We consider that it would be a useful addition to addition to the powers of the courts under section 43 to include an express power to vest a collateral credit contract in a trader along the same lines as in the MVSA, and as proposed for the Consumer Guarantees Act.
- 29 The Disputes Tribunal's powers are not as wide as those of the courts for Fair Trading Act remedies.⁹ The Disputes Tribunal does not currently have the power to void or vary contracts under section 43(2)(a) or (b) of the Fair Trading Act, but it is able to order parties to pay money, and to vary or set aside agreements in appropriate circumstances under section 19 of the Disputes Tribunal Act 1988.
- 30 It has been separately recommended that the Disputes Tribunal should be able to make orders under section 43(2)(a) and (b). Consideration is also being given to enabling the Disputes Tribunal to consider matters under section 9 of the Fair Trading Act.
- 31 While the collateral credit agreement proposal is based on the MVSA, and is therefore intended to cover trader conduct that breaches the Fair Trading Act, consideration was not given to the ability to vest credit contracts with manufacturers. The ability to vest a credit contract with a manufacturer may enable the most appropriate body to be held to account for the breach; however, the manufacturer is less likely than a retailer to have had a role in arranging credit to facilitate the sale. The link between the creditor and the manufacturer will therefore not be as direct as the relationship between the creditor and the retailer.
- 32 The Consumer Guarantees Act already provides remedies for consumers from manufacturers for loss or damage resulting from a failure of a product to meet the Act's guarantees for acceptable quality, spare parts and manufacturer guarantees (sections 25 – 27). The crucial issue with vesting collateral credit agreements for rejected goods with suppliers is that consumers should be discharged from their liability; it does not particularly matter whether the credit agreement is vested in the retailer or the manufacturer as far as the consumer is concerned.

Voiding Collateral Credit Agreements for Failure to Supply Goods.

- 33 Several industry associations submitted that the Consumer Guarantees Act should include provisions conferring on the Disputes Tribunal or court the ability

⁹ 39 of the Fair Trading Act limits the Disputes Tribunal from considering matters under section 9 of the Act – misleading or deceptive conduct generally – and from making orders under section 43(2)(a) & (b) to void or amend contracts or collateral arrangements.

to “void” a collateral credit agreement in the event that the goods have not or cannot be supplied. This would be a breach of the sale and purchase agreement, rather than the Consumer Guarantees Act or the Fair Trading Act.

- 34 “Failure to supply” may present similar issues to that for rejected goods when considering collateral credit agreements. Failure to supply may result in a consumer being liable for all or part of the purchase price under a collateral credit agreement where the retailer/supplier does not make good. The Consumer Guarantees Act does not provide guarantees for the failure to supply of goods.¹⁰
- 35 In a “failure to supply” scenario the consumer may cancel the sale and purchase agreement under section 7 of the Contractual Remedies Act 1979. The Contractual Remedies Act is general contract legislation, not specific consumer legislation. As such, the consumers’ ability to cancel the sale and purchase agreement is not clear and accessible. It is also unclear whether the section 7 provisions extend to cancellation of the collateral credit agreement because the provisions have not been tested.
- 36 In practice it is unclear whether it is a problem that consumers may be liable for credit when the goods are not supplied. Usually a creditor would take security over the goods being purchased using a collateral credit agreement, and the money would not be advanced until the security has been taken. Typically this would require the goods to exist and have been supplied to the consumer.
- 37 A trader demanding or accepting payment without intending to supply the goods, or without reasonable grounds for believing that they will be able to supply the goods, is committing an offence under section 21 of the Fair Trading Act. In this case, the consumer would have the new remedy available and be able to seek to have the collateral credit agreement vested in the supplier by the court or Disputes Tribunal. This means that an additional remedy for failure to supply the goods for which the credit is provided would not be necessary.

Automatic Vesting of Credit Contract upon Rejection

- 38 One consumer organisation submitted that collateral credit agreements should *automatically* vest in the trader when goods are rejected under the Consumer Guarantees Act. The current proposal is that the Disputes Tribunal (and the courts) should have the power to order that collateral credit agreements be vested in the supplier when the goods are rejected under the Consumer Guarantees Act (or the supplier commits a breach of the Fair Trading Act). This is the power that the MVDT has under the MVSA.
- 39 The self-help remedy for consumers to reject goods and demand a refund when a Consumer Guarantees Act guarantee is breached does not require the intervention of the Disputes Tribunal or court. We understand the practice with rejected goods and collateral credit agreements is that traders typically refund the purchase price of the goods directly to the creditor. Refunds are typically not made to the consumer because the creditor loses control over the subsequent

¹⁰ Note that continuous supply goods and services (such as electricity) are a special case because the continuity of supply is an essential feature of the good or service.

use of the money and the ability to secure the loan. This process typically results in the consumer losing the ability to reuse the credit, but it will generally rule-off the consumer's liability.¹¹

- 40 The need for an order from the Disputes Tribunal or a court will only arise where there is a breakdown in the usual practice, and the consumer remains liable under the collateral credit agreement. This would be most likely to occur where the supplier contests the rejection of the goods, or where the supplier is insolvent and is unable to pay the refund to the creditor or the consumer.
- 41 Providing the Disputes Tribunal or court with a specific power to vest collateral credit agreements in suppliers would mean the direction from the Disputes Tribunal or court would be very clear. They could also address matters such as any money already paid for the goods (deposit and loan repayments), and the additional costs associated with the use of the credit. These issues are likely to be difficult and case-specific, and they are not matters that could be usefully dealt with through some sort of automatic mechanism.

Application of Consumer Guarantees Act Guarantees to Collateral Credit Agreements

- 42 One lawyer suggested that creditors providing loans for consumer goods should also be accountable for the statutory guarantees under the Consumer Guarantees Act. As previously discussed, the Consumer Guarantees Act already establishes that creditors which take security over the goods purchased under a collateral credit agreement are suppliers, and therefore carry joint and several liability for the guarantees and associated remedies.
- 43 Where the creditor does not take security over the goods purchased, the Consumer Guarantees Act currently treats the creditor as being sufficiently separate from the supply of the goods for the guarantees not be treated as being provided by the creditor.¹²
- 44 The process in the MVSA does not depend on creditors having taken security for collateral credit agreements to be vested in the trader. Unsecured creditors are also covered. The proposal is to take the same approach with the Consumer Guarantees Act, which would mean that *unsecured* collateral creditors would also be suppliers liable under the Consumer Guarantees Act guarantees. The creditor would still have a commercial relationship with the supplier selling the goods and arranging the finance to qualify as a creditor under a collateral credit agreement.

The Cost of Credit

- 45 In vesting a collateral credit agreement under the MVSA in the trader, the MVDT typically requires the trader to refund to the consumer any deposit and the amount of the loan they have repaid. This means that the consumer pays the interest charges until the contract is vested in the trader. The cost of establishing the credit will typically be included in the outstanding balance of the credit

¹¹ The consumer may still have a contingent liability for costs, fees, penalties and any unpaid interest.

¹² See paragraph (b) of the definition of supplier in section 2 of the Consumer Guarantees Act.

contract, and the trader will also be liable for that amount when a collateral credit agreement is vested with the trader.

- 46 It is unclear whether the Consumer Guarantees Act intends consumers to be able to recover the additional costs associated with credit, such as establishment fees, when a good is rejected for a breach of a statutory guarantee. Under the rulings of the MVDT, consumers are not required to cover the additional costs when the contract is vested in the trader. However, if a refund was provided by the trader (to the consumer or the creditor) it may not necessarily cover the additional cost of the credit – i.e. refund may only be for the purchase price of the vehicle.
- 47 If the collateral credit agreement is vested in the trader, and the consumer is discharged from liability under the collateral credit agreement, then any additional costs which remain unpaid will become the responsibility of the trader.
- 48 It is arguable that the consumer should be covered for these costs, because they have not obtained the full benefit of the credit due to a substantial failing in the goods, or a misrepresentation or poor trader conduct.
- 49 If the costs have already been paid by the consumer, then the consumer may have the ability to recover these additional costs as a loss under sections 18(4) and 23(1)(a) of the Consumer Guarantees Act.¹³ Whether the costs would be recoverable in a particular case, or whether unpaid costs would be vested in the trader with the collateral credit agreement, would be matters to be decided on the discretion of the Disputes Tribunal or the court according to the circumstances of the case. It may be appropriate, for example, for the consumer to bear the cost of interest under the credit contract while the goods are functioning properly, and before the guarantee under the Consumer Guarantees Act is breached.

Recommendations

- 50 The concerns raised with the proposal to provide for collateral credit agreements to be vested in the supplier when the goods are rejected (or there is a contravention of the Fair Trading Act) do not establish any substantial reason not to proceed with the proposal. It is particularly significant that creditors under a collateral credit agreement are already suppliers under the Consumer Guarantees Act where they take security over the purchased goods, so they are already financially exposed to breaches of Consumer Guarantees Act guarantees by traders.
- 51 It is therefore recommended that:
- provisions be included in the Consumer Guarantees Act that allow the Disputes Tribunal or court to vest the rights and obligations of a consumer purchasing goods under a collateral credit agreement in the supplier of those goods, where:

¹³ *Consumer Guarantees Act s.23 – Consumers' options of refund or replacement (1)(a) a refund of any money paid or other consideration provided by the consumer in respect of the rejected goods.*

- the collateral credit agreement is associated with the contract for sale of the goods;
- the supplier is party to the contract for sale of the goods; and
- one of the following applies:
 - the consumer exercises the right to reject the goods under the Consumer Guarantees Act and, on a claim made by the consumer to the Disputes Tribunal or court, the Disputes Tribunal or court orders the supplier to refund any money paid, or other consideration provided, for the goods; or
 - the Disputes Tribunal or court finds that the consumer has, or is likely to suffer, loss or damage by the conduct of the supplier that constitutes, or would constitute, any of the conduct referred to in section 43(1) of the Fair Trading Act 1986 and the Disputes Tribunal or court makes an order under section 43(2) of that Act declaring the whole or any part of the contract for sale to be void.